

California Regional Water Quality Control Board
Santa Ana Region

March 3, 2006

**UPDATE TO THE
AGENDA**
(Prepared on 02/24/06)

The following items have been postponed:

17. **Administrative Civil Liability Complaint, SunCal Companies, Tract 31462, Beaumont, Riverside County.**
18. **Big Bear Lake Nutrient Total Maximum Daily Loads (TMDLs), Public Hearing.** This item is postponed to the April 21, 2006, Board Meeting.

The following items have been removed for the reasons stated:

16. **Administrative Civil Liability Complaint, K. Hovnanian-Forecast Homes Tracts No. 30789 and 31917, Lake Elsinore, Riverside County.**
This item was settled and no Board action was necessary.

California Regional Water Quality Control Board
Santa Ana Region
Staff Report
March 3, 2006

ITEM: 16

SUBJECT: Order No. R8-2005-0021 Affirming Administrative Civil Liability Complaint No. R8-2005-0102, K. Hovnanian-Forecast Homes, Lake Elsinore Construction Site, Riverside County

BACKGROUND

On November 22, 2006, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2005-0102 (copy attached) to K. Hovnanian-Forecast Homes (Forecast) for alleged violations of the Watershed-Wide Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with New Developments in the San Jacinto Watershed, NPDES No. CAG618005, Order No. 01-34 (San Jacinto Permit). In the ACL, the Executive Officer proposed an assessment of \$311,890 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Forecast.

ACL No. R8-2005-0102 was issued by the Executive Officer to Forecast for a lack of implementation of erosion and sediment control Best Management Practices (BMPs) at Forecast's construction site in Lake Elsinore, resulting in the discharge of sediment-laden storm water to the storm drain system tributary to Lake Elsinore.

DISCUSSION

The San Jacinto Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$200 plus \$20/acre up to 100 acres plus 18.5% surcharge), with the Regional Board. Forecast had two NOIs for the site obtained on July 22, 2003 and August 5, 2004 with WDIDs 8 33J300223 (82 acres) & 8 33J300432 (51 acres). The site is located northwest of the intersection of McVickers Canyon Parkway and Grand Avenue in the City of Lake Elsinore.

- a. Forecast's 133-acre site is being developed in stages. On October 20, 2004, Board staff inspected the site during a rain event. Board staff

noted a lack of erosion and sediment controls and a lack of diversion of run-on. Board staff spoke with Forecast staff on that day and informed them that the control measures appeared inadequate.

- b. On October 26, 2004, Board staff inspected the site on a day before a predicted storm event. Forecast had constructed a sediment trap with some erosion controls, but other areas still had run-on flows and most areas lacked proper erosion controls. Board staff expressed its concerns to Forecast staff regarding the inadequacy of the sediment trap to handle the run-on flow, the absence of sediment basin specified in the SWPPP and the lack of proper erosion controls at the site.
- c. On October 27, 2004, Board staff inspected the site during a rain event. The sediment trap was inadequately sized and was filled due to heavy erosion.
- d. On November 16, 2004, Board staff and City staff met with Forecast staff at the site and discussed issues related to inadequate erosion and sediment controls at the site.
- e. On January 7, 2005, Board staff inspected the site during a rain event and found inadequate sediment controls and sediment-laden run-off leaving the site.
- f. On February 16, 2005, Board staff issued a Notice of Violation (NOV) to Forecast for the issues described above.
- g. On March 25, 2005, Forecast submitted a response to the NOV. On April 1, 2005, Board staff contacted Forecast staff by telephone and discussed the deficiencies in Forecast's response, including the inadequacy of the sediment controls.
- h. On April 28, 2005, Board staff conducted a follow-up inspection of the site during a rain event. The site still had inadequate erosion and sediment controls and was discharging sediment-laden run-off.

Forecast violated Provisions I.3 and IV.2 and Section A.6 of the San Jacinto Permit. Pursuant to Water Code Section 13385(c) civil liability may be administratively imposed for the preceeding violations by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day of violation. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. The volume of the unauthorized, sediment-laden storm water discharge was estimated to be a minimum of 15 million gallons, based on runoff from 4 days of rain and the area of the site. Therefore the maximum civil liability that can be imposed is \$150.03 million (\$40,000 for four days of violation and \$10 per gallon based on the discharge volume).

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The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger was fully aware of the requirements of the San Jacinto Permit to develop and implement an adequate combination of erosion and sediment controls. As a result of inadequate BMP implementation, an excessive amount of sediment was discharged to storm drains tributary to Lake Elsinore.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

Prior to the inspections that led to the issuance of the NOV for the subject site, Forecast was issued one ACL for another construction site.

4. Degree of Culpability

Forecast submitted two NOIs and agreed to comply with the terms and conditions of the San Jacinto Permit. Forecast is therefore fully culpable for violating the San Jacinto Permit, which implements the Clean Water Act. In addition, staff warned Forecast at least on three occasions that the BMPs were inadequate and needed improvement. Further, the City of Lake Elsinore had also issued notices to Forecast due to inadequate erosion and sediment controls.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By failing to effectively implement an effective combination of erosion and sediment control BMPs, Forecast gained an economic advantage of approximately \$121,900. Economic savings from these violations are estimated as follows:

Cost to implement erosion controls (plastic liners or other equivalent controls for the unlined ditches)	\$18,900
Cost to construct adequate detention basins	\$46,000
Cost to divert water run-on	\$57,000
Total cost savings	= \$121,900

6. Other Matters as Justice May Require

Regional Board staff spent approximately 45 hours investigating these incidents (@\$70.00 per hour, the total cost for staff time is \$3,150).

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a Revised Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm and consistent. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board adopt Order R8-2005-0021, affirming the assessment of \$311,890 specified in Administrative Civil Liability Complaint No. R8-2005-0102, issued by the Executive Officer on November 22, 2005.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Complaint No. R8-2005-0102
)	for
)	Administrative Civil Liability
K. Hovnanian-Forecast Homes)	
3536 Concoors Street, Ste. 100)	
Ontario, CA 91764)	
)	
Attn: Mr. Steven Keene)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. K. Hovnanian-Forecast Homes (Forecast) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.
2. A hearing in this matter will be scheduled for the Board's regular meeting on January 18, 2006. Forecast or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Forecast obtained coverage for three adjacent construction sites under the Watershed-Wide Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with New Developments in the San Jacinto Watershed, NPDES No. CAG618005, Order No. 01-34 (San Jacinto Permit) on July 22, 2003 (Tract 30789, WDID No. 8 33J300223) and August 5, 2004 (Tract 31917, WDID No. 8 33J300432). Each of these sites also has an approved storm water pollution prevention plan (SWPPP). The sites are located in the City of Lake Elsinore.
5. Forecast is alleged to have violated Provisions I. 3, IV. 2, and Section A. 6 of the San Jacinto Permit. Specific violations are identified in Paragraph 6, below.
 - a. Provision I. 3 of the San Jacinto Permit states:

"Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

b. Provision IV. 2 states:

"All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT¹ performance standard."

c. Section A. 6 states:

"At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season....."

6. This complaint is based on the following facts:

- a. Forecast is the owner named in the Notices of Intent (NOI) for the 82 and 51-acre construction sites located northwest of McVickers Canyon Park Road, Lake Elsinore, CA. The developer is also Forecast and the contact for the sites is currently Mr. Steven Keene. The land has steep hills draining to a wash on one side and a residential area on the other side.
- b. On October 20, 2004, Board staff conducted an inspection of the Forecast construction sites during a rain event. The SWPPP for Tract 31917 specified run-on to the tract was to be diverted away from any disturbed areas. None of the sites had made any provisions for diverting run-on. The SWPPP specified permanent and temporary sediment control basins. The permanent sediment control basins, intended as a post-construction BMP, were being used as sediment control basins during construction. The temporary sediment basins specified in the SWPPP had not been built. The permanent basin by Sandpiper Drive was inadequate for sediment control, and it quickly clogged during the rain event. These are violations of Provision IV. 2 and Section A. 6 of the San Jacinto Permit.
- c. Forecast had built large check dams across the steep, dirt street, to slow the flows, to capture sediment and to direct the flow to the sediment basin. Some of the check dams were washed away during the storm and the flows were not directed into the sediment basin. This caused a discharge of sediment-laden storm water onto Sandpiper Drive, a residential neighborhood, depositing sediment and rocks as large as 5 inches for three blocks down the street until the flow entered a storm drain inlet. A sample of the run-off was obtained. The sample contained 41,000 mg/l total suspended solids (TSS) compared to the U. S. EPA benchmark of 100 mg/l TSS². The discharge of TSS, in excess of levels expected in storm water runoff where proper control measures are implemented, threatens to cause pollution and indicates that proper controls have not been implemented. No

¹ BAT is the acronym for Best Available Technology; BCT is the acronym for Best Conventional Technology.

² The 100 mg/l benchmark for TSS is directly from the federal industrial multi-sector permit. Construction is considered one kind of industry.

erosion control measures were implemented at the site. These are violations of Provisions I. 3, IV. 2 and Section A. 6 of the San Jacinto Permit.

- d. On October 26, 2004, Board staff inspected the sites again. There was a new sediment trap about 150 feet uphill from the end of Sandpiper Drive. The discharge from the sediment trap did not go into the sediment basin, but discharged directly into the storm drain system. Board staff met with site personnel and advised them that the BMPs specified in the SWPPP were not properly being implemented.
- e. On October 27, 2004, Board staff re-inspected the sites during a storm event. The sediment trap upstream from Sandpiper Drive had been completely filled with sediment from upstream erosion. There were no erosion control measures implemented. The run-off was sampled and it contained 13,000 mg/l TSS. These are violations of Provisions I. 3 and IV. 2 and Section A. 6 of the San Jacinto Permit.
- f. On November 16, 2004, Board staff inspected the sites with the City of Lake Elsinore inspectors and Forecast staff. Various non-compliance issues were discussed with Forecast.
- g. On January 7, 2005, Board staff inspected the sites. Samples taken showed discharges of 4,500 mg/l TSS near Sandpiper Drive and 9,000 mg/l TSS near McVickers Canyon Park Road.
- h. On February 16, 2005, Board staff issued a Notice of Violation (NOV) to Forecast outlining the violations noted in Paragraphs b. – g., above. Forecast was directed to immediately implement an effective combination of erosion and sediment control BMPs at the site. Forecast's March 25, 2005 response indicated that new controls had been implemented to bring the sites into compliance with the San Jacinto Permit.
- i. On April 1, 2005, Board staff contacted Forecast staff by telephone and discussed the deficiencies in the March 25, 2005 response, including the inadequate sediment basin on the Sandpiper Drive side of the sites and the lack of any sediment basins on the McVickers Canyon Park Road side of the sites.
- j. On April 28, 2005, Board staff conducted a follow-up inspection of the sites during a rain event. Two samples were taken. The first sample was taken at a discharge point from the sediment basin on the Sandpiper Drive side of the sites. The permanent sediment basin was mostly being bypassed and the sample results showed a sediment level of 48,000 mg/l TSS. Run-off from the McVickers Canyon Park Road side of the sites had a sediment level of 16,000 mg/l TSS.

7. Forecast violated Provisions I. 3, IV. 2 and Section A. 6 of the San Jacinto Permit by failing to properly implement an effective combination of erosion and sediment control BMPs and failing to implement the approved SWPPP. Forecast discharged storm water containing pollutants to waters of the United States from the above construction sites. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.
8. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon of discharge, may be imposed for each gallon discharged in excess of 1,000 gallons.
9. Sediment-laden storm water discharged to the storm drain system from the sites was estimated to be 15 million gallons for 4 days when staff observed discharges from the sites (based on rainfall intensity, area and runoff coefficient).
10. Pursuant to Section 13385(c), the total maximum assessment for which Forecast is civilly liable is \$150.03 million, based on estimated discharge (15 million gallons - 1,000 gallons = 14.999 million gallons @ \$10 per gallon) and \$40,000 @ \$10,000 for 4 days of violations for the 4 days of discharge observed for the violations cited in Paragraph 7, above.
11. Forecast saved an estimated \$121,900 by not implementing adequate control measures at the sites. This is based on an additional cost of: a) \$57,000 for channeling of run-on water (@ \$19/ft for 3,000 feet of two-foot diameter corrugated plastic pipe); b) \$10,000 for proper design and construction of two temporary sediment basins (@ \$5,000/basin); c) \$36,000 for cleaning both basins 6 times during the winter (@ \$3,000/basin per cleaning), d) \$18,900 for 10 mil plastic for 3,000 linear feet of lined ditch (@ \$126/12'x20' roll).
12. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. These factors are evaluated in the table below.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	The SWPPPs specified that sediment basins be used to adequately desilt the run-off from the site. Due to the lack of adequate sediment basins, sediment-laden storm water discharges occurred throughout the rainy season and entered the storm drain system. Photos taken and samples collected at the sites indicates excessive sediments in the discharge. Forecast failed to implement an effective combination of erosion and sediment control BMPs. Forecast failed to adequately respond to oral requests for corrective actions at the site.
B. Culpability	Forecast violated the terms of the San Jacinto Permit by failing to implement the approved SWPPP. Throughout the rainy season, Forecast did not implement an adequate combination of erosion and sediment control BMPs and continued to discharge polluted storm water into the storm drain system. Forecast did not respond in a timely manner to Board staff's efforts to bring the sites into compliance.
C. Economic Benefit or Savings	Forecast saved at least \$121,900 by not implementing adequate BMPs.
D. Prior History of Violations	In 2005, Forecast Homes and K. Hovnanian Homes were issued four ACLs for violations of the San Jacinto Permit and the General Permit for construction sites in Riverside County.
E. Other matters as justice may require	Regional Board staff spent approximately 45 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$3,150).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed assessment.

13. After consideration of the above factors, the Executive Officer proposes that civil liability be imposed on Forecast in the amount of \$311,890 for the violations cited above. This amount is based on cost savings of \$121,900, plus \$40,000 for 4 days of violation @ \$10,000/day and \$149,990 for 15 million gallons – 1,000 gallons @ \$0.01 per gallon of discharge.

WAIVER OF HEARING

Forecast may waive its right to a hearing. If you choose to do so, please sign the attached waiver form and return it, together with a check for \$311,890 in the enclosed preprinted envelope. The check should be made out to the State Water Resources Control Board.

If you have any questions, please contact Ms. Milasol C. Gaslan at (951) 782-4419, or Mr. Michael J. Adackapara at (951) 782-3238 or contact the Board's legal counsel, Jorge Leon, at (916) 341-5180.

11-22-05
Date


Gerard J. Thibeault
Executive Officer

**Complaint No. R8-2005-0102
for
Administrative Civil Liability**

Attn: Mr. Steven Keene

I agree to waive the right of K. Hovnanian Forecast Homes to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2005-0102. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$311,890. I understand that I am giving up the right of K. Hovnanian Forecast Homes to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

for K. Hovnanian Forecast Homes

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Order No. R8-2006-0021
)	for
K. Hovnanian-Forecast Homes)	Administrative Civil Liability
3536 Concourses Street, Ste. 100)	
Ontario, CA 91764)	
)	
Attn: Mr. Steven Keene)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on March 3, 2006 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2005-0102, dated November 22, 2005, and on the recommendation for the imposition of administrative civil liability pursuant to Water Code Section 13385. The Board finds as follows:

1. On January 19, 2001, the Board adopted the Watershed-Wide Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with New Developments in the San Jacinto Watershed, NPDES No. CAG618005, Order No. 01-34 (San Jacinto Permit). On July 22, 2003, K. Hovnanian-Forecast Homes (Forecast) obtained coverage for Tract 30789, WDID No. 8 33J300223; and on August 5, 2004 for Tract 31917, WDID No. 8 33J300432. These tracts are located northwest of the intersection of McVickers Canyon Parkway and Grand Avenue in Lake Elsinore. The Permit requires Forecast to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) and a monitoring program/reporting plan. The SWPPP must identify best management practices (BMPs) to reduce or prevent pollutants in storm water and authorized non-storm water discharges. Forecast is required to implement controls to reduce pollutants in storm water discharges from their construction sites to the Best Available Technology (BAT)/Best Conventional Pollutant Control Technology (BCT) performance standard. Each of the tracts has an approved SWPPP.
2. On October 20, 26, 27 and November 16, 2004, and on January 7 and April 28, 2005, Board staff conducted inspections of the site. Staff observed a lack of erosion controls, improperly designed sediment basins, and discharge of sediment-laden storm water to the streets and areas tributary to Lake Elsinore.
3. The allegations in Complaint No. R8-2005-0102 are incorporated herein.
4. Water Code Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day of violation. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in

excess of 1,000 gallons. Based on the violations cited above, Forecast is civilly liable for a maximum amount of \$150,030,000.

5. On November 22, 2005, after consideration of the factors specified in Section 13385(e) of the Water Code, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2005-0102 to Forecast, proposing that the Board impose civil liability in the amount of \$311,890 on Forecast, for the violations cited above.
6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385, administrative civil liability shall be imposed on Forecast in the amount of \$311,890 for the violations cited in Complaint No. R8-2005-0102, payable as set forth below.

1. Forecast shall pay \$311,890 to the State Water Resources Control Board by April 3, 2006.
2. Forecast may submit a proposal prior to April 3, 2006 to the Executive Officer for participation in a supplemental environmental project for up to fifty percent of the assessed amount in lieu of payment of the full amount of the assessment to the State Water Resources Control Board.
3. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's action on this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on March 3, 2006.

Gerard J. Thibeault
Executive Officer